

**A Mangalam d/o Sinniah v
Kattayat Mohandas s/o CP Narayanan Menon**

B HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION N S8-33-1424
OF 2003
FAIZA TAMBY CHIK J
16 AUGUST 2005

C *Civil Procedure — Injunction — Interlocutory injunction — Restrain husband from dissipating funds and assets and to prevent him defeating wife's claims and to preserve status quo — Whether exist serious questions to be tried — Balance of convenience — Adequacy of damages — Whether husband brought materials/evidence to displace material/evidence by the wife — Rules of the High Court 1980 O 29 & O 32 r 6*

D The petitioner ('wife') came to court first and lodged a petition for judicial separation. After about 10 months the respondent ('husband') filed a petition for divorce. The court directed that both the petitions be heard together. In the meantime, the wife had answered the divorce petition reserving her rights to object to the petition and raise preliminary issues. The court was informed that the wife discovered that the husband was quietly dissipating assets under ingenious or clandestine methods. Hence an application was filed for restraining orders by way of interlocutory injunction before the court which was granted ex parte with a further order that the ex parte application be made inter partes. The interim order was extended with a further order of another hearing date. Before the hearing of the inter partes, the husband's solicitors filed an application to set aside the interim injunction. The husband complained to the court that the injunction had brought great hardship on him as assets and funds were frozen and that he could not withdraw funds to meet various outgoings or expenditures. The wife filed another application to the court to extend the interim injunction order until the date of disposal of the petitions by both parties. In the meantime, the wife allowed the husband to open a new and fresh account to allow him to bank in all incomes and also to draw out funds for him to meet necessary expenditures. The opening of the new account was on condition that the husband complied with several conditions which were made to him by the wife in open court in the presence of all parties and their solicitors. The same was agreed by the husband. The interlocutory injunction obtained was to restrain the husband from dissipating funds and assets and to prevent him defeating the wife's claims and to preserve status quo.

Held:

- I** (1) There were many bona fide serious issues which required mature consideration of merits and this could not be performed at this stage. They ought to be exercised at the hearing of the petitions. Therefore, the matter could be disposed of in limine, ie the interlocutory injunction was allowed to continue until the disposal of the petition. On the fact, the court had already granted

order in terms to the wife's application to extend the interim injunction until the disposal of the petition. If the husband was not happy with the decision of the court, he should approach the Court of Appeal by way of an appeal which the husband failed to do so far (see para 3); *American Cyanamid v Ethicon Ltd* [1975] AC 398 referred; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 and *Thye Hin Enterprise Sdn Bhd v Daimlerchrysler Malaysia Sdn Bhd* [2005] 1 MLJ 293 followed.

- (2) On the facts, the husband had stacked away fund in Mohan Anaesthetic Clinic, which he did by way of transferring bulk of his shares to another person, namely Dr Sappany. As of 11 May 2004, the husband held almost all the shares in Mohan Anesthetic Clinic, ie 998 shares out of 1,000 issued shares, the other two shares was held by Dr Sappany. As of 23 November 2004, the husband transferred a bulk of his shares to Dr Sappany who now holds 501 compared to 499 shares now owned by the husband. This was clear evidence of dissipation of funds to defeat the claims of the wife (see para 7).
- (3) The test for setting aside the injunction was not placed under O 32 r 6 of the Rules of the High Court 1980 ('the RHC'). The wife's injunctive relief was founded under O 29 of the RHC. The husband should demonstrate to the court that the test under O 29 of the RHC had not been complied with. In other words, he should bring materials/evidence to displace the material/evidence by the wife to the court. He had failed to do so. On the contrary, the injunction had satisfied all the tests spelled out under O 29 of the RHC (see para 8).

[Bahasa Malaysia summary]

Pempetisyen ('isteri') telah menghadap mahkamah dahulu dan mengemukakan petisyen untuk perpisahan kehakiman. Setelah lebih kurang 10 bulan kemudian, responden ('suami') telah memfailkan satu petisyen perceraian. Mahkamah mengarahkan agar kedua-dua petisyen tersebut didengar bersama. Sementara itu, isteri telah menjawab petisyen perceraian yang memberinya hak untuk membantah terhadap petisyen itu dan menimbulkan persoalan awalan. Mahkamah dimaklumkan bahawa isteri telah mendapati bahawa suami secara senyap telah melepaskan aset-aset dengan cara yang bijak dan sulit. Justeru itu satu permohonan telah difailkan untuk mendapat perintah sekatan melalui injunksi interlokutori di hadapan mahkamah yang telah membenarkan secara ex parte dan selanjutnya satu perintah untuk tarikh perbicaraan. Sebelum perbicaraan inter partes itu, peguam suami telah memfailkan satu permohonan untuk mengeneipkan injunksi interlokutori itu. Suami telah mengadu kepada mahkamah bahawa injunksi itu telah menyebabkan kesukaran terhadap beliau kerana aset-aset dan wang simpanan telah dibekukan dan beliau tidak dapat mengeluarkan wang untuk memenuhi perbelanjaan. Isteri telah memfailkan satu lagi permohonan kepada mahkamah untuk melanjutkan perintah injunksi interim itu sehingga tarikh selesainya petisyen-petisyen oleh kedua-dua pihak. Sementara itu, isteri telah membenarkan suami membuka akaun baru bagi membolehkan beliau memasukkan pendapatannya dan juga mengeluarkan wang untuk perbelanjaan keperluannya. Pembukaan akaun baru itu adalah dengan syarat bahawa suami mematuhi beberapa syarat yang dibuat untuknya oleh isteri dalam

A mahkamah terbuka dengan kehadiran semua pihak dan peguam masing-masing. Yang sama telah dipersetujui oleh suami. Injunksi interlocutori telah menyekat suami daripada melenyapkan wang dan aset-aset dan untuk menyekatnya daripada menggagalkan tuntutan isteri dan untuk mengekalkan status quo.]

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Diputuskan:

- C (1) Terdapat persoalan bona fide serius yang memerlukan pertimbangan matang berdasarkan merit dan ini tidak dapat dilaksanakan di peringkat ini. Ia sepatutnya dilaksanakan di perbicaraan petisyen-petisyen itu. Oleh itu, perkara tersebut dapat diselesaikan in limine, iaitu injunksi interlocutori dibenarkan untuk diteruskan sehingga penyelesaian petisyen itu. Berdasarkan fakta, mahkamah telahpun memberikan perintah seperti dipohon terhadap permohonan isteri untuk melanjutkan injunksi interim sehingga petisyen diselesaikan. Sekiranya suami tidak gembira dengan keputusan mahkamah, beliau patut ke Mahkamah Rayuan melalui rayuan yang mana suami gagal berbuat demikian (lihat perenggan 3); *American Cyanamid v Ethicon Ltd* [1975] AC 398 dirujuk; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 dan *Thye Hin Enterprise Sdn Bhd v Daimlerchrysler Malaysia Sdn Bhd* [2005] 1 MLJ 293 diikuti.
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- E (2) Berdasarkan fakta-fakta berikut, suami telah melonggok wang di Klinik Anestatik Mohan, yang dilakukan olehnya dengan memindahkan sebahagian besar syernya kepada seorang yang lain, iaitu Dr Sappany. Setakat 11 Mei 2004, suami telah memegang hampir kesemua syer dalam Klinik Anestatik Mohan, iaitu 998 syer daripada 1,000 syer yang dikeluarkan, yang mana dua syer lain itu dipegang oleh Dr Sappany. Setakat 23 November 2004, suami telah memindahkan sebahagian besar syernya kepada Dr Sappany yang kini memegang 501 berbanding kepada 499 syer yang kini dipegang oleh suami. Ini adalah bukti jelas pelepasan wang untuk menggagalkan tuntutan isteri (lihat perenggan 7).
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- G (3) Ujian untuk mengenepikan injunksi tidak terletak di bawah A 32 k 6 Kaedah-Kaedah Mahkamah Tinggi 1980 ("KMT"). Relief injunksi isteri berasaskan A 29 KMT. Suami sepatutnya menunjukkan kepada mahkamah bahawa ujian di bawah A 29 KMT tidak dipatuhi. Dalam kata lain, beliau sepatutnya mengemukakan bahan/bukti untuk menggantikan bahan/bukti oleh isteri ke mahkamah. Beliau telah gagal berbuat demikian. Sebaliknya,
- H injunksi tersebut telah memenuhi semua ujian yang dinyatakan di bawah A 29 KMT (lihat perenggan 8).

Notes

- I For cases on ex parte injunction, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 2867–2982.

Cases referred to

Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd [1986] 1 MLJ 382 (refd)
American Cyanamid v Ethicon Ltd [1975] AC 398 (refd)

- Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (folld) A
- Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] SLR 632 (refd)
- Mohamed Zainuddin bin Puteh v Yap Chee Seng* [1978] 1 MLJ 40 (refd)
- Motor Sports International Ltd (Servants or Agents at Federal Territory of Labuan) & Ors v Delcont (M) Sdn Bhd* [1996] 2 MLJ 605 (refd) B
- Ng Hee Thoong v Public Bank Bhd* [1995] 1 MLJ 281 (refd)
- Sakkap Commodities (M) Sdn Bhd v Cecil Abraham* [1998] 4 CLJ 812 (refd)
- Sri Rusa Beach Resort Sdn Bhd v Asia Pacific Hotels Management Pte Ltd* [1985] 1 MLJ 132 (refd)
- Thye Hin Enterprise Sdn Bhd v Daimlerchrysler Malaysia Sdn Bhd* [2005] 1 MLJ 293 (folld) C

Legislation referred to

Rules of the High Court 1980 O 29, O 32 r 6

- R Arunachalam (Arun & Co) for the petitioner wife.* D
- YN Foo (Puravelan with him) (YN Foo & Co) for the respondent husband.*

Faiza Tamby Chik J:

[1] The petitioner (wife) came to court first and lodged a petition for judicial separation on 9 December 2003 (encl (1) S8–33–1424 of 2003). After about 10 months, the respondent (husband) filed a petition for divorce (encl (1) S8–33–1474 of 2004). The court directed that both the petitions for judicial separation and divorce be heard together. It was observed that there was a need to make a technical amendment to delete certain words in the judicial separation. This was allowed by the court. The respondent replied to the judicial separation after about more than one year. The husband's petition for divorce is grounded upon that the marriage cannot be reconciled and produced a certificate of non-reconciliation. The wife is challenging this certificate as being null and void. If she succeeds the divorce petition falls to the ground. In the meantime, the wife has answered the divorce petition reserving her rights to object to the petition and raise preliminary issues. The court was informed recently that the Wife discovered that the Husband was quietly dissipating assets under ingenious or clandestine methods. Hence, an application was filed encl (39) for restraining orders by way of interlocutory injunction before the court which was granted ex parte with a further order that the ex parte application be made inter partes to be heard on 28 June 2005. On 28 June 2005, the interim order was extended with a further order of another hearing date. However, on or about 27 June 2005, just one day before the hearing of the inter partes, the husband's solicitors filed an application to set aside the interim injunction supported with extensive affidavit (encl 56). This affidavit needed to be addressed by the wife by way of reply and therefore the matter was adjourned to 13 July 2005. The aforesaid reply by the wife was lodged in court and served (encl 58). E

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[2] One important development surfaced after this order of interim injunction. The husband complained to court in person together with his counsels that the injunction had brought great hardship on him as assets and funds are frozen and that

A he cannot withdraw funds to meet various outgoings or expenditures. On or about 27 June 2005, the wife's solicitors filed another application to the court (encl 53) to extend the interim injunction order until the date of disposal of the substantive petitions by both parties (judicial separation and divorce petition). Despite initial strong objections from the wife, counsel for the wife extended professional indulgence and persuaded the wife to allow the husband to open a new and fresh account to allow him to bank in all incomes and also to draw out funds for him to meet necessary expenditures. This I think would overcome the difficulties the husband complained earlier. I said in open court that I would not record this new arrangement and the opening of fresh account. It is noted that this suggestion to open new account on condition that the husband complies with several conditions which were made to him by the wife's counsel (Mr Arunachalam) in open court in the presence of all parties and their solicitors/counsels. The same was agreed by the husband including the counsels that the following conditions are agreed upon:

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- (a) that the husband open a new account in a bank to deposit his income/remuneration into this account;
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- (b) that the husband provide the account number to the wife and her lawyer for record purposes immediately after opening such account;
- (c) that the husband produce weekly information of flow in and flow out of funds held at the bank;
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- (d) that the husband furnish a copy of the monthly statement of account to the office of the wife's lawyer.

It must be made clear here that the opening of such an account is agreed by parties in this case voluntarily and the court has stated that it would not record anything at all as evidence pertaining to this said agreement.

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[3] It must be observed that the interlocutory injunction obtained is to restrain the husband from dissipating funds and assets and to prevent him defeating the wife's claims and to preserve status quo. If not for the injunction the husband will succeed in his scheme to dissipate or hide away assets and funds. With the above prelude the most important question is whether during the hearing of the inter partes application for injunction, the court can go into the merits of the case when there are serious issues to be tried. I think the answer is in the negative. In the light of the various serious issues raised both by the wife and husband it is trite law that the court cannot go into the merits of the case. In the celebrated case of *American Cyanamid v Ethicon Ltd* [1975] AC 398 at p 510, Lord Diplock in his speech said that there is no need for a party seeking injunction to show a prima facie case. His Lordship said:

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... the court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words that there is a serious question to be tried. It is no part of the courts at this stage of the litigation to try to resolve conflict of evidence on affidavits as to facts on which the claim of either party may ultimately depend nor to decide difficult question of law which call for detailed argument and mature consideration. *These are matters to be dealt with at the trial.* (Emphasis added.)

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And his Lordship added:

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The court is not justified in embarking on anything resembling a trial of the action on conflicting affidavits in order to evaluate the strength of either party's case.

In the end, the House of Lords unanimously allowed the injunction to continue and refused to go into the merits at the hearing of the interlocutory injunction. In *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193, in allowing the continuance of the interim injunction, the Court of Appeal per Gopal Sri Ram JCA (adopting a very eminent decision of Hashim Yeop A Sani J (as he then was) in *Mohamed Zainuddin bin Puteh v Yap Chee Seng* [1978] 1 MLJ 40 said (at p 207):

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A judge hearing an application for interlocutory injunction should undertake an inquiry along the following lines:

- (a) he must ask himself whether the totality of the facts presented before him discloses a bona fide serious issues to be tried;
- (b) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessments he must take into account all relevant matters, including the practical realities of the case;
- (c) the judge must have in the forefront of his mind that the remedy he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the status quo.

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And further, the court held at p 209:

The learned judge's finding that the agreement was illegal and that there was therefore no serious question to be tried is clearly contrary to the pronouncements in the cases of *Mohamed Zainuddin* and *Si Rusa Beach Resort Sdn Bhd v Asia Pacific Hotels Management Pte Ltd* [1985] 1 MLJ 132, the latter being an authority plainly binding on him. The legality of the agreement is a serious question requiring mature consideration at the trial of the action and should not have been gone into in detail at the interlocutory stages as was done by the learned judge.

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Another case of equal importance which echoed the decision in *Keet Gerald* is *Thye Hin Enterprise Sdn Bhd v Daimlerchrysler Malaysia Sdn Bhd* [2005] 1 MLJ 293. Here, the Court of Appeal per Mohd Ghazali JCA held the same principle as in *Keet Gerald*:

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- (i) whether the facts presented disclosed a bona fide serious issues to be tried;
- (ii) whether the justice of the case laid in the Plaintiff's favour; and
- (iii) whether there were any 'discretionary considerations' against the grant of the interim injunction sought.

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In *Sri Rusa Beach Resort Sdn Bhd v Asia Pacific Hotels Management Pte Ltd* [1985] 1 MLJ 132, the court held at p 134 that:

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The learned judge observed that stage of the case, the court need not embark upon the trial of the issues; the operator in seeking interim injunction, need not prove clear title; the operator is only to satisfy the court that there are triable issues in connection with the right alleged and that there is doubt as to existence of such right. He held that the court was satisfied the operator had succeeded in raising serious questions for trial.

- A** The court further held at p 136:
- ...This is a question of fact and has to be resolved but our view is that it is not for the court to resolve it at the stage of the litigation ...
- B** Since there are serious factual questions as well as points of law that need to be tried, the question of the adequacy of compensation by an award of damages cannot therefore be properly determined. In that event and since there is a doubt what remains to be considered is the question of balance of convenience. And in this regard 'where other facts appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve status quo' (see *American Cyanamid's* case at p 511).
- C** It therefore follows that in the case before me there are many bona fide serious issues which require mature consideration of merits and this cannot be performed at this stage. They ought to be exercised at the hearing of the petitions. I therefore can conclude based on the above principles alone, the matter can be disposed of in limine, ie the interlocutory injunction is allowed to continue until the disposal of the petition. In fact, I have already granted order in terms to the wife's application to extend the interim injunction until the disposal of the petition. The wife's application to extend is found in encl (53) and this has been granted. I think if at all the husband is not happy with my decision he should approach the Court of Appeal by way of an appeal which the husband failed to do so far.
- D**
- E** [4] The husband's grounds for setting aside the interim injunction (encl 56) are as follows:
- (a) the husband is in need of funds in order to maintain himself, the wife and their son Vinod;
 - (b) the husband is in need of funds in order to maintain his two young twin children, Akhilesh and Avinesh ('the said twins');
 - (c) the husband is in need of funds in order to pay for day to day living, household bills, medical expenses and insurance payments of himself and the wife, the son Vinod, and the said twins;
 - (d) if the husband is unable to utilize the monies in his accounts to pay for the monthly insurance policies already taken, the husband will be taken to be in default of the same and the said policies would be cancelled;
 - (e) the husband is in need of funds to pay for loans taken towards the purchase of various properties (some of which are in joint names with the wife), failing which the husband (and the wife) would lose his and/or their rights to the said properties;
 - (f) the husband is in need of funds to pay for the day to day running of his clinic, Mohan Anaesthesia Clinic Sdn Bhd.
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- I** I am of the view that since parties have agreed voluntarily to open a new account and the above grounds (a) to (e) cannot be a problem. As for the twin children only reasonable amounts are appropriate and not inflated amount as suggested by the husband.

[5] It is noted that the husband raised all these issues in his affidavit (encl 55 in support of the summons in chambers to set aside injunction). In encl 56 (see para 4 particularly 4.2), the wife had challenged the husband vide her affidavit in reply (see encl 58, para 4 and 5). This has not been denied or opposed by the husband in his affidavit in reply (see encl 62). Therefore the contentions or challenge of the wife is deemed to be admitted.

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[6] In *Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd* [1986] 1 MLJ 382, the Supreme Court held at p 385:

There is force in the appellant's contention that an affidavit must reply specifically to allegations, and if it does not, then those allegations not replied to must be taken to have been accepted.

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In *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281, the court held at p 286:

Now, it is a well settled principle governing the evaluation of affidavit evidence that where one party makes a positive assertion upon a material issue, the failure of his opponent to contradict it is usually treated as an admission by him of the fact so asserted.

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In *Sakkap Commodities (M) Sdn Bhd v Cecil Abraham* [1998] 4 CLJ 812, the Court of Appeal held at p 829:

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In accordance with the established principles governing the judicial appreciation of affidavit evidence, the defendant's averment must be taken to have been admitted by the plaintiff. As this court observed in *Ng Hee Thoong v Public Bank Bhd* [1995] 1 MLJ 281, it is well settled principle governing the evaluation of affidavit evidence that where one party makes a positive assertion upon a material issue, the failure of his opponent to contradict is usually treated as an admission by him of the fact so asserted.

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[7] It is pertinent to note the vehicles, the husband had used to stack away fund in Mohan Anaesthetic Clinic, which he did by way of transferring bulk of his shares to another person namely Dr Sappany. As of 11 May 2004 (see exh 'M-6' encl 39 — SIC for injunctions), the husband held almost all the shares in Mohan Anesthetic Clinic, ie 998 shares out of 1,000 issued shares, the other two shares was held by Dr Sappany. As of 23 November 2004 (see exh M-7 encl 39), the husband transferred a bulk of his shares to Dr Sappany who now holds 501 compared to 499 now owned by the husband. I view this as clear evidence of dissipation of funds to defeat the claims of the wife. By this manoeuvre, the husband's assets are transferred to Dr Sappany. This is seen in exh 'M-6' encl 39 where unappropriated profit in Mohan Anesthetic Clinic was RM900,282 for the period of 11 May 2004. As at date of 23 November 2004 (see exh 'M-7' encl 39 under the title 'Untung dan Rugi') the net dividend is declared as RM2,000,000 whereas the unappropriated profit reached RM1,767,811. These are the monies I think the husband is attempting to dissipate by share swaps and the Wife wants to stop it by way of the restraining order before the court. Therefore, the contention of the husband's counsel that, 'that there is no evidence to show there is danger that the husband assets will be dissipated to prejudice the wife's claim' is in direct contradiction to the weight of evidence as illustrated above.

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A [8] The test for setting aside the injunction is not placed under O 32 r 6 of the Rules of the High Court 1980 ('the RHC'). The wife's injunctive relief is founded under O 29 of RHC. The husband's counsel should demonstrate to the court that the test under O 29 of the RHC has not been complied with. In other words, they should bring materials/evidence to displace the material/evidence by the wife to the court. I think that they have failed to do so. On the contrary, the injunction founded under O 29 has satisfied all the tests spelled out under O 29.

B [9] The husband's counsel submitted that an interim injunction should not place an unnecessary restraint upon a party. To support his contention the counsel submitted the case of *Motor Sports International Ltd (Servants or Agents at Federal Territory of Labuan) & Ors v Delcont (M) Sdn Bhd* [1996] 2 MLJ 605 which states:

An ex parte interim injunction — '... ought not to place a restraint upon a defendant more than is absolutely necessary.'

D Further, '... where a plaintiff claims an exact sum, a Mareva Injunction that restrains the defendant from dissipating his assets must specify an upper limit, if it does not, then the order is liable to be condemned as being too wide and therefore oppressive. The remedy of a Mareva is, after all, equitable relief that is granted to ensure that the course of justice is not thwarted. Since equitable considerations are involved, a court should carefully weigh the balance of justice to ensure that any order it makes or any relief it grants in the exercise of its Mareva jurisdiction is not used as an instrument of oppression.'

E As was stated in the case of *Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] SLR 632:

F ... the plaintiffs' application for an injunction, coming some nine months after the commencement of proceedings against the defendants, was an abuse of the process of the court. Their motive was not to protect themselves against the risk of dissipation but to oppress the defendants and force them to settle and/or to obtain security for the claim.

G The husband's counsel submitted that it is telling that the wife has only sought the injunction now, nearly three years after the institution of the judicial separation petition in December 2003. If it was truly warranted, the wife could have sought the injunction at any time within the past three years but did not do so.

H [10] I am of the opinion that the *Motor Sport's* case has no application in the instant case. This is because that case concerned with Mareva injunction. The injunction sought and obtained here is the interlocutory injunction under O 29 of the RHC. The principle cited by the husband's counsel is not applicable to this injunction. In *Motor Sport's* case, the plaintiff claimed an exact sum but did not specify an upper limit which is an essential requirement to get Mareva injunction. In this instant case, the petitioner wife did not plead for any exact sum. In fact, she cannot do so because this is a matrimonial dispute. So, *Motor Sport's* case dealing with Mareva injunction cannot apply to the case before me, both on facts and principles.

I As for their contention that the husband should specify the upper limit is only applicable to Mareva injunctions. In any event, the wife does not know what maxim

limit of assets is owned by the husband. It appears that during a considerable period of time the husband was dissipating more and more assets. The principle that injunctive relief cannot be used as an instrument of oppression in court is only applicable to Mareva injunctions. In any event these allegations are not raised in any of the husband's affidavit and the counsel cannot submit from the Bar. Here again the case of *Meespierson NV* is applicable only to Mareva injunction and not the interlocutory injunctive relief in this instant case. Here again the complaint of delay and other allegations cited above are not raised in the affidavit. It is observed that the Wife only came to know about all the dissipation recently and she never suspected the husband would embark on these schemes. In *Meespierson NV*'s case, there was on facts no evidence of dissipation of assets whereas that is not the situation in this instant case. In addition, the parties were both bankers unlike in the present case. All allegations are bare allegations and they have been denied by the wife in her replies in affidavit. The husband did not come to court with any evidence to support his bare allegations.

[11] In para 21 of her affidavit, the wife deponed that the husband has schemed to remove monies from his saving account with the intention of lying or defeating her claim. Enclosure 58, para 16, the wife asserted that the husband paid RM130,000 to which admission was made by the husband. As to challenge by the wife in respect of FIC issue, the husband had not reverted with any evidence to support his contention in para 5 of his reply (see encl 62 para 5). Another example of dissipation would be the husband's purchase of a bungalow raised in the wife's affidavit. The purchase of the bungalow was not disclosed in the affidavit of means (see encl 58 — para 45). The wife contends that the husband purchased a bungalow and alleged that it was kept secret. The husband said in his affidavit that he took a bank draft from EON Bank Bhd for circa RM500,000. The wife further alleged that the husband did not utilise the money from EON Bank to purchase the bungalow and alleged that the money was brought in from another bank (AmBank) to purchase it (see exh 'M4' — encl 58). The husband however did not bring cogent evidence to court to deny or disprove this. At this juncture, I must remind parties that I had ruled on 13 July 2005 at the repeated request of Mr Puravelan (one of the husband's counsels) that no party should file anymore affidavits after 13 July 2005. It was agreed by all parties/counsels. Despite my direction, the husband's solicitors filed and served an affidavit on 14 July 2005 to adduce evidence that money to buy the bungalow land was actually emerging from another solicitor's firm namely Messrs Dass, Zainab & Partners. It is noted that the wife's solicitors has written to the court and the respondent's solicitors that the said affidavit is objectionable and cannot be admitted or allowed because of the above ruling. They also expressed their fear that parties are flouting my ruling as above and reserved the wife's right to reply (see Appendix 'A', the letter under reference written on 14 July 2005). In any event, the said affidavit does not demolish the wife's contention. The explanation given in that affidavit does not prove that the money came from the solicitor's clients' account. Mere explanation in affidavit is not enough. The solicitors should prove by documentary evidence that the funds came from the husband and further evidence addressed to show the fund was placed in clients' account to be released from the clients' account to obtain the AMBank

A cashier's order. The question is who paid money to obtain this cashier's order in AmBank. No such evidence is presented and therefore the court cannot consider it. Another question is why the husband moved to another solicitors, ie Messrs Dass, Zainab & Partners to lodge funds there to purchase the bungalow. The question is why not retain the same solicitors, ie Messrs YN Foo for the same bungalow transaction. In any event, this is a Family Court case.

B [12] As for the foreign funds, the husband has not disclosed the addresses of the institutions and other details like account numbers, etc before the court. Besides the husband has not even disclosed what is the amount held in overseas funds. See husband's affidavit of means — encl 37A, para 14.2, where no such details are given.

C [13] It is observed that the wife did not ask for Mareva injunction. The principles applicable to Mareva injunction are not relevant to interlocutory injunction under O 29 of the RHC. A Mareva injunction is an equitable relief but not an injunction to prevent the status quo of the subject matter of litigation. It is an aid of execution.

D In deciding whether the Mareva injunction should be granted there must be a strong prima facie case before it is granted. There is no such requirement in interlocutory injunction. The *American Cyanamid* principle on interlocutory injunction are not relevant to Mareva injunction which is of a different character, for the successful application. Mareva injunction will not obtain a perpetual injunction. Therefore, all cases referred by the husband in respect of Mareva injunction are not relevant and inapplicable to this case which involves interlocutory injunction and not Mareva injunction.

E [14] Therefore, the order made by me in reference to encl 39 (the interim injunction) and order made for encl 39 (extension of interim injunction) is hereby sustained and shall not be set aside. This is my decision in this case pursuant to principle established by the Court of Appeal case of *RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd* [2002] 3 MLJ 1, where the Court of Appeal held per Abdul Hamid Mohamad JCA granting or extended an interim injunction said (at p 8):

F It must be pointed out that an interim injunction is not an extension of the ex parte order which expires after 21 days. It is a fresh order made on the converted inter partes application now before the court. And, when the court finally hears the application, inter partes, the court will then decide whether or not to grant an injunction, inter partes. That will be a fresh order again.

G [15] Therefore, this is a fresh order pursuant to encl 53 whereby it is ordered that the injunction is to continue until the disposal of the petition. The remedy for the husband is to appeal against that decision. This court is not the forum for such an appeal or platform to relitigate once over after granting of order pursuant to the order for extension (encl 53).

I

[16] For these reasons, I grant order in terms of encl 53 filed by the wife and encl 56 filed by the husband is hereby dismissed. For both enclosures costs in the cause.

Order accordingly.

Reported by Peter Ling

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